IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 16 OF 1996

Mahendra Balaso Lade ..... Appellant.

versus

The State of Maharashtra ..... Respondents.

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Shri P.P.Hudlikar for the appellant
Shri A.S. Shitole APP for State.

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CORAM ; V.G.PALSHIKAR &
V.C. DAGA , JJ.

DATED; 8TH JUNE, 2005

ORAL JUDGMENT (Per Palshikar, H.);

1. Being aggrieved by the judgment dated 20/10/1995 passed by the IIIrd Additional Sessions Judge, Satara in Sessions Case No. 54 of 1990, the appellant has preferred this appeal on the ground mentioned in the memo of appeal as also canvassed before us.

2. With the assistance of the learned advocate appearing on behalf of the appellant and the learned APP, we have scrutinised the entire record, and re-appreciated the evidence both oral and documentary as is raised on the record before the Additional Sessions Judge.

3. The prosecution case stated briefly is that the accused and the complainant were friends. Sangeeta was sister of the accused and it is alleged that she had an affair with the deceased. The deceased had some photograph of Sangeeta with him. It is the case of the prosecution that using those photographs the deceased used to demand from Sangeeta her consent for marrying the victim. When the accused came to know of this fact he got annoyed. On 12-12-1989 at about 9.15 a.m. when the victim was going to his friend, the accused came there and took the deceased Balu aside and asked him to return the photographs of his sister Sangeeta. An altercation arose and according to the prosecution, the accused took up a knife and stabbed Balu the deceased at the stomach. The victim collapsed and the accused went to the police station, disclossed that he assaulted the victim. The investigation was conducted and the prosecution examined 11 witnesses to prove its case that the accused, the present appellant, committed murder of victim Balu. It is this order of conviction which is impugned in this appeal.

4. As aforesaid, we have gone through the entire evidence and we have re-appreciated the same. The learned counsel appearing on behalf of the accused very

fairly stated that it is very difficult to contend that the above witnesses are liable to be disbelieved. According to the learned counsel even if the entire story of the prosecution and the evidence is accepted as correct, the learned Judge erred in convicting the accused u/s 302 IPC as the case of the accused is squarely covered by the provisions of section 300 of IPC. According to the learned counsel, the accused was annoyed by the conduct of the victim and therefore demanded from the victim the photograph of his sister Sangeeta, so that she is no more harassed. It is also proved, according to the learned counsel, that the photographs were not given nor there was any agreement to return the photograph which enraged in altercation and resulted in stabbing the victim. According to the learned counsel. it is a clear case of sudden provocation on the part of the victim which resulted in his death. In view of this candid statement made by the learned counsel for the accused all that he is required in the present case is examination under sec. 300 IPC on the facts and the evidence which we have reappreciated. Section 300 IPC reads thus:

300. Exception 1.

"Culpable homicide is not murder if the offence, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident."

5. Exception (1) of section 300 as quoted above is very clear that causing of homicidal death is not murder as defined by section 300, if the death is caused on grave and sudden provocation. In view of the fact that the evidence as led by the prosecution is acceptable in so far as the occurrence of the incident is concerned, all that we have required is to examine this aspect namely the case being covered by Exception (1) of section 300 IPC. The circumstances which are proved on record admit no dispute. It is true that the victim had photographs of Sangeeta. It is true that he was harassing Sangeeta. It is true that the accused demanded the photograph back. It is true that it was denied and consequently accused assaulted the victim.

6. It is pertinent to note that after having committed the assault the accused realised the gravity of his action and therefore voluntarily made disclosure of the

assault by going to the police station and narrating everything to police. These circumstances, in our opinion, reveal that the act of stabbing took place on the spur of moment because the accused enraged by the later denial of the victim to return the photograph of Sangeeta, when victim had no right to keep them. The denial of adult woman's photograph to her brother on a preambiguous pretext that the holder of the photograph loves the woman in the photograph which gave raise to certain provocation. Any normal reasonable human being is bound to be enraged by such an attitude of a person with whom his sister is not involved, alleging that he has the right to keep the photograph.

7. It is also in evidence that the accused demanded back the photograph and the victim denied it. In the present day society in which the accused and the victim live even smallest spur of the character of a woman can result in destroying the life of the woman. Sangeeta was of marriageable age. She had no love or affection for the victim. Infact she loves someone else. The possibility of her marriage was almost shaken by the denial of the victim to return the photograph of Sangeeta. Any reasonable man can be enraged by such conduct. The accused was also enraged and there was no pre meditation. There was no reason except the flat

denial of the accused, to assault the victim. The fact that he had a knife with him does not speak of any pre-meditation and cannot be used as evidence of pre-medication for the simple reason that the meeting of the accused and the victim according to the evidence as established on record took place by chance. Merely because the accused had in his possession a knife it cannot be said that he was moving around for an opportunity to meet the accused and stab him. In the absence of such evidence it is difficult to hold that there was any pre-medication in this regard.

8. The prosecution has proved the incident, it is true that the accused did assault. Infact in view of the statement made by the accused in the police station disclosing the incident by itself is a proof both of the involvement of the accused as also of his intention which was not to murder the accused but to claim back the photograph of his sister Sangeeta. Having realised that he has committed a crime, he had also courage to go to the police station and tell what he has done. Such conduct in itself meditate against any existence of premeditation in such a person. In our opinion therefore, there is no reason why this statement on the part of the learned counsel be not accepted. It obviously therefore a case of committing or causing

homicidal death without any intention. It is a case of homicidal death not amounting to murder and therefore covered by section 304-I of IPC.

9. The incident is of 1989. The death is caused by sudden provocation. The accused has himself told the police how the death has occurred. The conviction for murder in the circumstances is unsustainable in law.

10. That takes us to the question of sentence. The provocation was for claiming back the photograph of the sister of accused to maintain her dignity and honour in the society and to prevent any untoward incident in the future and to prevent ruining of her chances of marriage. Taking into consideration of the circumstances and the fact that the incident was of 1989, in our opinion, the interest of justice would be met, if the accused is sentenced under section 304-I of IPC instead of sec. 302 IPC and sentence to suffer R.I. for a period of seven years. In the result therefore, the appeal partly succeeds and is allowed. The conviction and sentence u/s. 302 IPC is set aside instead the accused is convicted u/s. 304-I of IPC and sentenced to suffer R.I. for seven years. The accused was on bail. Four weeks time is granted to surrender to bail. The bail bonds are cancelled. The concerned

police station is directed to take immediate steps of arresting the accused in the event of his not surrendering within four weeks from the date of receipt of this order.

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